



June 23, 2009

**SUBJECT: Amendment of Outside Counsel Agreement for Litigation  
Advice and Services****REPORT IN BRIEF**

Approval is requested for a Second Amendment to a contract with the law firm of Bertrand Fox & Elliot, to provide legal services, advice, and representation in police liability and civil rights issues, including grievance arbitration, litigation in state and federal courts, administrative proceedings, and related assignments. The current contract began in 2007 and provides for fees not to exceed \$100,000. This second amendment is required to reflect the fact that the City is currently defending several complex police civil rights cases, as well as other police liability cases, which will continue for several more years and involve substantial additional work and trial preparation.

**BACKGROUND**

Gregory Fox, a specialist in the areas of constitutional and civil rights issues and partner in the law firm of Bertrand Fox & Elliot, was retained by the City Attorney under Section 908 of the City Charter to represent the City and provide legal services, advice, and representation in police liability, and civil rights issues, including grievance arbitration, litigation, administrative proceedings, and related assignments.

The City's current contract with Bertrand Fox & Elliot has a limit of \$100,000. Bertrand Fox & Elliot is the City's outside counsel in the Canas shooting case, the complex Oberg constitutional rights case, and several other cases involving police liability and civil rights claims. Since it is anticipated that the work on these pending matters will continue for 2 years, and the City may have additional civil rights cases it is required to defend in the next several years, an increase in the contract maximum amount is required to accommodate the anticipated additional work and representation.

**DISCUSSION**

Due to ongoing and future litigation, the City will continue to require the specialized legal services of Bertrand Fox & Elliot in the area of police liability and civil rights. The City Attorney finds the billing rate for this firm to be highly competitive with other legal firms providing similar services and that the work performed to date has been efficient and demonstrated good cost control..

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June 23, 2009

Page 2 of 2

**FISCAL IMPACT**

Funds are available in the budgeted 08-09 and 09-10 City Attorney operating budget, and are anticipated to be budgeted in future operating budgets.

**PUBLIC CONTACT**

Public contact was made through posting of the agenda on the City's official notice bulletin board, posting of the agenda and report on the City's web page, and the availability of the report in the Library and the City Clerk's office.

**ALTERNATIVES**

1. Approve a second amendment to increase the contract with the law firm of Bertrand Fox & Elliot in an amount not to exceed \$250,000.
2. Do not approve a second amendment to the contract with Bertrand Fox & Elliot.

**RECOMMENDATION**

Alternative 1, Council approve a Second Amendment to the Outside Counsel Services Agreement with Bertrand Fox & Elliot for legal services in an additional amount not to exceed \$250,000.

Prepared and reviewed by:



\_\_\_\_\_  
David E. Kahn, City Attorney  
City Attorney's Office

**Attachments:**

Attachment A – Draft Second Amendment to Outside Counsel Agreement

**SECOND AMENDMENT TO  
OUTSIDE COUNSEL SERVICES AGREEMENT  
BETWEEN THE CITY OF SUNNYVALE AND  
BERTRAND, FOX & ELLIOT, LLP**

THE OUTSIDE COUNSEL SERVICES AGREEMENT commencing March 12, 2007, by and between the CITY OF SUNNYVALE, a municipal corporation ("City") and BERTRAND, FOX & ELLIOT, LLP ("Outside Counsel") is hereby amended, effective June 10, 2009, as to Section 4.0, as follows:

1. Section 4.0 is hereby amended to read as follows:

**4.0 COMPENSATION, REIMBURSEMENT AND METHOD OF  
PAYMENTS.**

**4.1 Compensation.** Fees for all legal services provided hereunder shall be charged in accordance with Exhibit "A" which is attached and incorporated by reference. Exhibit "A" may be amended, from time to time, to alter fees and charges applicable hereto provided that a letter agreement is duly signed and approved by the City Attorney. The total amount of fees and expenses shall not exceed \$250,000.00.

2. Except as amended above, all other terms and conditions of the Agreement commencing, March 12, 2007, shall remain in effect.

IN WITNESS WHEREOF, City and Outside Counsel have executed this Second Amendment to Outside Counsel Agreement.

Dated: \_\_\_\_\_, 2009

CITY OF SUNNYVALE  
A Municipal Corporation

By \_\_\_\_\_  
David E. Kahn, City Attorney

Dated: \_\_\_\_\_, 2009

BERTRAND, FOX & ELLIOT, LLP  
A Professional Corporation

By \_\_\_\_\_  
Gregory M. Fox

**EXHIBIT A**

BERTRAND, FOX, &amp; ELLIOT

## RATE SCHEDULE

Partners (litigation matter)	\$165
Partners (non-litigation matter)	\$195
Associates	\$155